

**IN THE UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF GEORGIA  
ATLANTA DIVISION**

## IN RE ANDROGEL ANTITRUST LITIGATION (II)

**: CASE NO. 1:09-MD-2084-TWT**  
**:**  
**: DIRECT PURCHASER CLASS**  
**: ACTIONS**

**ROCHESTER DRUG CO-  
OPERATIVE, INC.,  
Plaintiff,  
v.**

## DIRECT PURCHASER INDIVIDUAL ACTIONS

**UNIMED PHARMACEUTICALS,  
INC., ET AL.,  
Defendants.**

**CASE NO. 1:09-CV-956-TWT**

**LOUISIANA WHOLESALE DRUG  
CO., INC., ET AL.,  
Plaintiffs,  
v.**

**CASE NO. 1:09-CV-957-TWT**

**UNIMED PHARMACEUTICALS,  
INC., ET AL.,  
Defendants.**

**MEIJER, INC., ET AL.,**  
**Plaintiffs,**  
**v.**

**CASE NO. 1:09-CV-958-TWT**

**UNIMED PHARMACEUTICALS,  
INC., ET AL.,  
Defendants.**

**UNIMED PHARMACEUTICALS,  
INC., ET AL.,  
Defendants.**

— — — — —

**CASE NO. 1:09-CV-2913-TWT**

**V.**

**UNIMED PHARMACEUTICALS,  
INC., ET AL.,  
Defendants.**

**CASE NO. 1:09-CV-2776-TWT**

**V.**

**UNIMED PHARMACEUTICALS,  
INC., ET AL.,  
Defendants.**

**CASE NO. 1:09-CV-3019-TWT**

**SUPERVALU, INC.,**  
**Plaintiff,**

**CASE NO. 1:10-CV-1024-TWT**

---

**v.**

**UNIMED PHARMACEUTICALS,  
INC., ET AL.,  
Defendants.**

---

:  
:  
:  
:  
:  
:  
:

**DIRECT PURCHASER PLAINTIFFS' MOTION TO  
COMPEL DEFENDANTS TO PRODUCE WITNESSES  
ON PATENT MERITS ISSUES FOR DEPOSITION**

**TABLE OF CONTENTS**

<b>TABLE OF AUTHORITIES .....</b>	<b>ii</b>
<b>I. INTRODUCTION .....</b>	<b>1</b>
<b>II. PROCEDURAL HISTORY.....</b>	<b>2</b>
<b>A. Plaintiffs' Notices of Deposition .....</b>	<b>2</b>
<b>B. Plaintiffs' Voluntary Disclosure of Experts and Defendants' Objection .....</b>	<b>3</b>
<b>C. Defendants' Failure to Produce Witnesses for Properly-Noticed Depositions without Seeking a Protective Order Excusing the Witnesses from Appearing .....</b>	<b>6</b>
<b>III. ARGUMENT.....</b>	<b>7</b>
<b>IV. CONCLUSION .....</b>	<b>11</b>

## **TABLE OF AUTHORITIES**

### **FEDERAL CASES**

<i>Alexander v. FBI</i> , 186 F.R.D. 78 (D.D.C. 1998) .....	8
<i>AstraZeneca Pharms, LP v. Teva Pharms. USA, Inc.</i> No. 05-5333 (JAP), 2007 WL 4292384 (D.N.J. 2007) .....	10
<i>Atlantic City Associates, LLC v. Carter &amp; Burgess Consultants, Inc.</i> , No. 05-cv-3227, 2007 WL 63992 (D.N.J. January 5, 2007) .....	10
<i>Chamberlain Group, Inc. v. Interlogix, Inc.</i> , No. 01-C-6157, 2002 WL 653893 (N.D. Ill. Apr. 19, 2002) .....	9
<i>English Feedlot, Inc. v. Norden Laboratory, Inc.</i> , 833 F. Supp. 1498 (D. Colo. 1993) .....	9
<i>Greene, Tweed of DE, Inc. v. DuPont Dow Elastomers, LLC</i> , 202 F.R.D. 426 (E.D. Pa. 2001) .....	10
<i>Hepperle v. Johnston</i> , 590 F.2d 609 (5th Cir. 1979) .....	7, 8
<i>Hewlett-Packard Co. v. EMC Corp.</i> , 330 F. Supp. 2d 1087 (N.D. Cal. 2004) .....	9
<i>Kelly v. Old Dominion Freight Line, Inc.</i> , 376 Fed. Appx. 909 (11 <sup>th</sup> Cir. 2010) .....	7, 8
<i>Koch Refining Co. v. Boudreaux</i> , 85 F.3d 1178 (5th Cir.1996) .....	9
<i>U.S. ex. rel., Cherry Hill Convalescent Center, Inc. v. Healthcare Rehabilitation Systems, Inc.</i> , 994 F. Supp. 244 (D.N.J. 1997) .....	11, 12

**STATE CASE**

*Conte v. Lawless,*

Civ. A. No. 02C-11-238JRS, 2005 WL 2436211 (Del. Super. Sept.  
29, 2005).....10

## **I. INTRODUCTION**

Without seeking a protective order and without any supported basis, Defendants Abbott Products, Inc. f/k/a Solvay Pharmaceuticals, Inc. and Unimed Pharmaceuticals, LLC (collectively “Solvay”) have unilaterally brought discovery on patent merits issues to a halt by refusing to produce witnesses for deposition. With the discovery clock ticking, Defendants’ machinations are causing Direct Purchaser Plaintiffs’ (“Plaintiffs”) immediate and substantial prejudice by being blocked from taking discovery on some of the key issues in this case – the validity and enforceability of U.S. Patent No. 6,503,894 (“the ’894 patent”), as well as its alleged infringement. Three properly-noticed defense witnesses have already failed to appear for deposition, *see* Doc. Nos. 201, 202, 203 and Defendants have confirmed that they will not produce *any* witnesses on patent merits issues until they determine whether any of their “attorney work product and attorney-client rights have been compromised” by Plaintiffs’ retention of potential experts, Dr. Howard Ira Maibach and Dr. Bozena B. Michniak-Kohn.<sup>1</sup> *See* March 10, 2011 Sorensen e-mail to Defendants (Exhibit A to the Declaration of Elena K. Chan (“Chan Decl.”); March 16, 2011 Sorensen Ltr to Defendants (Chan Decl., Ex. B); Doc. No. 217-1 at 8, n. 3. Defendants filed motions to disqualify Drs. Maibach

---

<sup>1</sup> Solvay has no relationship with Dr. Michniak-Kohn.

and Michniak-Kohn, Doc. Nos. 216, 217,<sup>2</sup> in which they fail to demonstrate that any confidential information was disclosed or that they would be prejudiced by Plaintiffs' retention of these experts. There is simply no basis for Defendants to stall patent merits discovery further.

Pursuant to Rule 37 of the Federal Rules of Civil Procedure and Local Rule 37.1, Plaintiffs hereby respectfully move this Court to compel Defendants to produce for deposition, Sandra Faulkner, S. George Kottayil, Robert E. Dudley, Ronald Swerdloff, and other witnesses on patent merits issues, who either have failed or refused to appear for properly-noticed depositions.

Plaintiffs certify under Fed. R. Civ. P. 37(a)(1) and Local Rule 37.1(A) that they have conferred in good faith with Defendants before filing this motion. *See* Chan Decl., Ex. B.

## **II. PROCEDURAL HISTORY**

### **A. Plaintiffs' Notices of Deposition**

In November 2010, Plaintiffs issued subpoenas for the depositions of, among others, Sandra Faulkner, S. George Kottayil, Robert E. Dudley, and Ronald

---

<sup>2</sup> Plaintiffs' oppositions to the expert disqualification motions were served on April 7 and 8, 2011. Solvay's motion also asked this Court to disqualify two law firms, Garwin Gerstein & Fisher LLP and Heim, Payne, & Chorus L.L.P., representing Plaintiffs from this case. *See* Doc. No. 217. Defendants Par Pharmaceutical Companies, Inc. and Paddock Laboratories, Inc. did not seek to disqualify Plaintiffs' counsel. *See* Doc. No. 216.



Swerdloff (Doc. No. 147). Plaintiffs postponed the depositions pending the parties' negotiations on the number of depositions and hours of testimony each side should be permitted and the scope of questioning, and requested that Defendants propose deposition dates that accommodate the witnesses' respective schedules. Despite multiple requests, Defendants failed to propose deposition dates. *See e.g.* Plaintiffs' February 4, and 17, 2011 e-mails to Defendants (Chan Decl., Exs. C, D). To avoid further delay, on March 4, 2011, Plaintiffs properly re-noticed the depositions of Sandra Faulkner, S. George Kottayil, Robert E. Dudley, and Ronald Swerdloff, (Doc. Nos. 200, 201, 202, and 203); March 4, 2011 Chan Letter to Defendants enclosing Notices of Deposition (Chan Decl., Ex. E).

### **B. Plaintiffs' Voluntary Disclosure of Experts and Defendants' Objection**

On February 25, 2011, Plaintiffs voluntarily disclosed to Defendants their intention to use Dr. Maibach<sup>3</sup> as an expert in this case. February 25, 2011 Chan Letter to Defendants (Chan Decl., Ex. F). Plaintiffs identified Dr. Maibach as a potential expert candidate through publicly available sources. *See* the Declaration of Russell A. Chorush ("Chorush Decl.") (Chan Decl., Ex. G), at ¶6. During

---

<sup>3</sup> Plaintiffs also disclosed their retention of Dr. Bozena B. Michniak-Kohn in the February 25, 2011 letter. Dr. Michniak-Kohn is the subject of Par/Paddock's motion to disqualify (Doc. No. 216), which Plaintiffs have opposed in a separate filing (Doc. No. 228). Solvay has not objected to Plaintiffs' retention of Dr. Michniak-Kohn.

Plaintiffs' initial communication with Dr. Maibach, Plaintiffs identified all Defendants by name and Dr. Maibach confirmed that he had no impediment to being adverse to any defendants in this case. *Id.* at ¶8. Dr. Maibach did not identify any prior relationship with any defendant, or any reason that would prevent him from serving as Plaintiffs' expert. *Id.* Subsequently, Plaintiffs learned of two documents that suggested that Paddock communicated with Dr. Maibach during the development of its generic version of AndroGel. *Id.* at ¶11. Although none of these facts would prevent Dr. Maibach from serving as Plaintiffs' expert in this case under the prevailing law on expert disqualification, out of an excess of caution, Plaintiffs notified Defendants of Plaintiffs' retention of Dr. Maibach. Chan Decl., Ex. F.

Plaintiffs were surprised to receive a letter from Solvay (and not Paddock) objecting to Plaintiffs' retention of Dr. Maibach on March 2, 2011.<sup>4</sup> March 2, 2011 Roberti Letter to Chan (Chan Decl., Ex. H). Solvay represented that it (and not Paddock) had retained Dr. Maibach as a non-testifying, consulting expert in the underlying patent litigations.<sup>5</sup> Solvay's letter argued that Plaintiffs' retention of

---

<sup>4</sup> Par/Paddock have not objected to Plaintiffs' retention of Dr. Maibach.

<sup>5</sup> *Unimed Pharm., Inc. v. Watson Pharm., Inc.*, No. 1:03-CV-2501-TWT (N.D. Ga. Aug. 21, 2003); *Unimed Pharm., Inc. v. Paddock Labs., Inc.*, No. 1:03-CV-2503-TWT (N.D. Ga. Aug. 21, 2003) (collectively, "patent litigations").

Dr. Maibach violated Solvay's attorney work product and attorney client privilege rights, requested information regarding Plaintiffs' communications with Dr. Maibach, and asked Plaintiffs to cease further communications with Dr. Maibach. *Id.*

Plaintiffs requested information from Solvay to evaluate its objection, including copies of any retention and confidentiality agreements; documents sufficient to show the issues Dr. Maibach purportedly was retained to consult on, the duration of Solvay's relationship with Dr. Maibach, the number of hours Dr. Maibach billed and was paid for, the number and frequency of any meetings and/or communications with Dr. Maibach, whether Dr. Maibach generated any work product and the type and page volume of any work product; and a log describing the content, date and type of information Solvay provided Dr. Maibach and the precise objection Solvay was asserting with respect to each entry. *See* March 4, 2011 Chan Ltr to Roberti (Chan Decl., Ex. I); March 9, 2011 Chorush Ltr to Roberti (Chan Decl., Ex. J). While Solvay eventually produced an engagement letter with Dr. Maibach, Solvay did not produce any evidence – not even a privilege log – showing that it revealed confidential information to Dr. Maibach. Solvay subsequently filed a motion to disqualify Dr. Maibach, in which Solvay fails to point to a single piece of confidential information it revealed to Dr.

Maibach. Doc. No. 217 (Solvay's motion also seeks to disqualify counsel who interacted with Dr. Maibach).

**C. Defendants' Failure to Produce Witnesses for Properly-Noticed Depositions without Seeking a Protective Order Excusing the Witnesses from Appearing**

Less than one week before the first deposition was scheduled to be taken, Defendants informed Plaintiffs in a letter on March 8, 2011 that "[u]ntil we can determine the extent to which counsel for plaintiffs have been exposed to Solvay's privileged information, Solvay objects to any deposition of witnesses regarding patent merits issues." March 8, 2011 Roberti Letter to Chan (Chan Decl., Ex. K). In a meet-and-confer teleconference on March 10, 2011, Defendants confirmed that they will not produce witnesses for deposition relating to patent merits issues, including the witness scheduled for March 14, 2011 (Sandra Faulkner). *See* Chan Decl., Ex. A.

On March 14, March 21, and April 5, 2011, Sandra Faulkner, S. George Kottayil, and Ronald Swerdloff, who are all under the control of Defendant Solvay, failed to appear for their properly-noticed depositions. In addition to Ms. Faulkner, Mr. Kottayil, and Dr. Swerdloff, Plaintiffs intend to cover patent merits topics in the depositions of Robert Dudley, which is notice for April 8, 2011, and French nationals, Dominique Salin-Drouin and Valerie Masini-Eteve, who are the subject

of Plaintiffs' Motion to Issue Letter of Request (Letter Rogatory) Under the Hague Convention (Doc. Nos. 196, 222).<sup>6</sup> Neither Ms. Faulkner, Mr. Kottayil, Dr. Swerdloff, nor Defendants sought a protective order relieving the witnesses from appearing at their properly-noticed depositions.

### **III. ARGUMENT**

A party or witness whose deposition has been properly noticed is under a duty to appear for the deposition. If the party or witness believes the scope of an upcoming deposition will be objectionable, it is incumbent on that person to seek relief from the court *in advance* of the deposition by moving for a protective order under Rule 26(c). *Hepperle v. Johnston*, 590 F.2d 609, 613 (5th Cir. 1979) ("unless he has obtained a court order that postpones or dispenses with his duty to appear, that duty remains"); *Kelly v. Old Dominion Freight Line, Inc.*, 376 Fed. Appx. 909, 913 (11th Cir. 2010).

Here, it is undisputed that Plaintiffs properly noticed the depositions of Sandra Faulkner, S. George Kottayil, Robert E. Dudley, and Ronald Swerdloff in this matter. However, without seeking relief from this Court, Defendants have unilaterally brought discovery on patent merits issues to a standstill by refusing to produce witnesses for deposition.

---

<sup>6</sup> That motion is fully briefed, and notably, Defendant Par/Paddock did not object to Plaintiffs' motion.

As this Court is aware, discovery on the merits of the ‘894 Patent is integral to Plaintiffs’ case, which alleges that Defendants restrained trade by filing, prosecuting, and settling sham litigation because the ‘894 Patent is invalid, unenforceable, and/or not infringed by Defendants Watson’s and Paddock’s proposed generic versions of AndroGel. As the primary individuals who worked on the development and formulation of AndroGel and/or invention claimed in the ‘894 Patent, Sandra Faulkner, S. George Kottayil, Robert E. Dudley, Ronald Swerdloff, Dominique Salin-Drouin, and Valerie Masini-Eteve, among others, have information necessary to prove Plaintiffs’ claims.

While Defendants have cited an objection to depositions of witnesses on patent merits issues on attorney work product and attorney-client privilege grounds, a mere objection is insufficient to excuse a deponent from appearing for a properly noticed deposition. *Hepperle*, 590 F.2d at 613; *Kelly*, 376 Fed. Appx. at 913 (even the filing of a motion for protective order is insufficient to exonerate a witness’ failure to appear at a scheduled deposition); *Alexander v. FBI*, 186 F.R.D. 78, 86-87 (D.D.C. 1998) (same). “[U]nless he has obtained a court order that postpones or dispenses with his duty to appear [for deposition], that duty remains.” *Hepperle*, 590 F.2d at 613.

Defendants refusal to produce witnesses for deposition is even more

unjustifiable given that they have offered nothing – not even a privilege log – in support of their objections to Plaintiffs’ proposed experts. As explained in detail in Plaintiffs’ Response in Opposition to Par/Paddock’s Motion Disqualify Dr. Michniak-Kohn (Doc. No. 228) and Response in Opposition to Solvay’s Motion to Preclude Plaintiffs’ Retention of Dr. Maibach and to Disqualify Plaintiffs’ Counsel, expert disqualification is not warranted *unless* Defendants bear their burden of showing, *inter alia*:

1. A confidential relationship existed between the moving party and the expert; that is, a confidential relationship developed into a matter sufficiently substantial to make disqualification or some other judicial remedy appropriate; *and*
2. The moving party actually disclosed confidential information to the expert during such confidential relationship that is relevant to the current litigation, and if revealed, would prejudice that party.

*U.S. ex. rel., Cherry Hill Convalescent Center, Inc. v. Healthcare Rehab Systems, Inc.*, 994 F. Supp. 244, 249-50 (D.N.J. 1997) (internal quotations omitted); *English Feedlot*, 833 F. Supp. at 1501-02. Only when the answer to both of these questions is affirmative is disqualification appropriate. *See Koch Refining Co. v. Jennifer L. Boudreau M/V*, 85 F.3d 1178, 1181 (5th Cir. 1996). *See also Hewlett-Packard Co. v. EMC Corp.*, 330 F. Supp. 2d 1087, 1092-3 (N.D. Cal. 2004) (“[d]isqualification [of an expert] is a drastic measure that courts should impose only hesitantly, reluctantly, and rarely”); *Chamberlain Group, Inc. v. Interlogix, Inc.*, No. 01-C-

6157, 2002 WL 653893 \*2 (N.D. Ill. Apr. 19, 2002).

The vague and conclusory affidavits that Solvay (and Par/Paddock) submitted with their motions are hardly sufficient to sustain a motion to disqualify an expert, which requires Defendants to identify “specific and unambiguous disclosures” made to Dr. Maibach (and Dr. Michniak-Kohn) which if revealed with prejudice Defendants. *Hewlett-Packard*, 330 F. Supp. 2d at 1094. Disqualification is not appropriate where a party urging disqualification on the basis of a confidential relationship makes “no effort to identify specifically the nature of the confidential information that was purportedly passed on to [the expert], beyond making vague references to ‘litigation strategy’ and ‘theories’.” *Conte v. Lawless*, Civ. A. No. 02C-11-238JRS, 2005 WL 2436211 at \*4 (Del. Super. Sept. 29, 2005).<sup>7</sup> Absent concrete evidence showing that Defendants shared confidential information with Dr. Maibach (and/or Dr. Michniak-Kohn), Defendants objections

---

<sup>7</sup>See also *Greene, Tweed of DE, Inc. v. DuPont Dow Elastomers, LLC*, 202 F.R.D. 426, 430 (E.D. Pa. 2001) (defendant could not support burden “by making conclusory assertions that the proposed experts were ‘privy to substantial confidential information related’” to the litigation); *Atlantic City Assocs., LLC v. Carter & Burgess Consultants, Inc.*, No. 05-cv-3227, 2007 WL 63992 at \* 2 (D.N.J. January 5, 2007) (Movant presented only “a generalized and vague allegation that the experts know ‘mental impressions and trial strategies,’” which is “hardly the sort of proffer” sufficient to disqualify an expert); *AstraZeneca Pharms., LP v. Teva Pharms USA, Inc.*, No. 05-5333(JAP), 2007 WL 4292384, at \*3 (D.N.J. Dec. 4, 2007) (finding insufficient the presentation of “little more than generalities too vague to prove that...[the expert] received confidential information from [the movant] with respect to [the drug at issue]”).



to Plaintiffs' retention of these experts cannot stand, and they have no basis to refuse to produce witnesses for deposition on patent merits issues.

By contrast, with the discovery clock ticking, Plaintiffs are suffering immediate and substantial prejudice by being blocked from completing discovery on some of the core issues in this case. Defendants' dilatory tactics should not go unnoticed by this Court: after delaying depositions by refusing to propose deposition dates that would be convenient for the witnesses under Defendants' control, *now* Defendants have halted all discovery on the patent merits based on empty allegations. This Court should not permit Defendants' machinations to continue.

Having provided no basis to relieve Defendants from producing witnesses for deposition on patent merits issues, this Court should order Defendants to produce Sandra Faulkner, S. George Kottayil, Robert E. Dudley, and Ronald Swerdloff for deposition without delay.

#### IV. **CONCLUSION**

For the foregoing reasons, this Court should compel Defendants to produce witnesses on patent merits issues for deposition immediately.

Respectfully submitted,

Date: April 8, 2011

/s/ Kenneth S. Canfield  
Kenneth S. Canfield

Ga. Bar. No. 107744  
[kcanfield@dsckd.com](mailto:kcanfield@dsckd.com)  
1355 Peachtree Street, Suite 1600  
Atlanta, Georgia 30309  
Telephone; (404) 881-8900  
Facsimile (404) 881-3007

Bruce E. Gerstein, Pro Hac Vice  
[bgerstein@garwingerstein.com](mailto:bgerstein@garwingerstein.com)  
Joseph Oppen, Pro Hac Vice  
[jopper@garwingerstein.com](mailto:jopper@garwingerstein.com)  
Elena K. Chan, Pro Hac Vice  
[echan@garwingerstein.com](mailto:echan@garwingerstein.com)  
GARWIN GERSTEIN & FISHER LLP  
1501 Broadway, Suite 1416  
New York, NY 10036  
Telephone: (212) 398-0055  
Facsimile: (212 ) 764-6620

David F. Sorensen, Pro Hac Vice  
[dsorensen@bm.net](mailto:dsorensen@bm.net)  
Eric Cramer, Pro Hac Vice  
[ecramer@bm.net](mailto:ecramer@bm.net)  
Ellen Noteware, Pro Hac Vice  
[enoteware@bm.net](mailto:enoteware@bm.net)  
BERGER & MONTAGUE, P.C.  
1622 Locust Street  
Philadelphia, PA 19103  
Telephone: (215)-875-4683  
Facsimile: (215)-875-4604

David P. Smith  
[dpsmith@smithfoote.com](mailto:dpsmith@smithfoote.com)  
W. Ross Foote  
[rfoote@smithfoote.com](mailto:rfoote@smithfoote.com)  
Susan Segura  
[ssegura@smithfoote.com](mailto:ssegura@smithfoote.com)  
THE SMITH FOOTE LAW FIRM LLP  
720 Murray Street  
P.O.Box 1632  
Alexandria, LA 71309  
Telephone: (318) 445-4480  
Facsimile: (318)487-1741

Joshua P. Davis (SBN. 193254)  
[davisj@usfca.edu](mailto:davisj@usfca.edu)  
LAW OFFICES OF JOSHUA P.  
DAVIS  
437A Valley Street  
San Francisco, CA 94131  
Telephone: (415) 422-6223

John Gregory Odom  
[jodom@odrlaw.com](mailto:jodom@odrlaw.com)  
Stuart Des Roches  
[stuart@odrlaw.com](mailto:stuart@odrlaw.com)  
Andrew Kelly  
[akelly@odrlaw.com](mailto:akelly@odrlaw.com)

David Balto  
LAW OFFICES OF DAVID BAL TO  
2600 Virginia Ave NW Suite 1111  
Washington, DC 20037

*Counsel for Rochester Drug Co-*

John Fitzpatrick  
[jfitzpatrick@odrlaw.com](mailto:jfitzpatrick@odrlaw.com)  
ODOM & DES ROCHES  
Poydras Center  
650 Poydras Street, Suite 2020  
New Orleans, LA 70130  
Telephone: (504) 522-0077  
Facsimile: (504) 522-0078

*operative, Inc.*

Russell A. Chorush  
[rchorush@hpcllp.com](mailto:rchorush@hpcllp.com)  
Miranda Jones  
[mjones@hpcllp.com](mailto:mjones@hpcllp.com)  
HEIM PAYNE & CHORUSH LLP  
Chase Tower  
600 Travis, Suite 6710  
Houston, TX 77002  
Telephone: (713) 221-2000  
Facsimile: (713) 221-2021

Linda P. Nussbaum  
John D. Radice  
Grant & Eisenhofer P.A.  
485 Lexington Avenue  
New York, NY 10017  
Telephone: (646) 722-8500  
Facsimile: (646) 722-8501

*Counsel for Louisiana Drug Company,  
Inc.*

Dianne M. Nast  
[dnast@rodanast.com](mailto:dnast@rodanast.com)  
Erin C. Burns  
[eburns@rodanast.com](mailto:eburns@rodanast.com)  
RodaNast, P.C.  
801 Estelle Drive  
Lancaster, Pennsylvania 17601  
Phone: 717-892-3000  
Fax: 717-892-1200

Joseph M. Vanek  
[jvanek@vaneklaw.com](mailto:jvanek@vaneklaw.com)  
David P. Germaine  
[dgermaine@vaneklaw.com](mailto:dgermaine@vaneklaw.com)  
VANEK, VICKERS & MASINI, P.C.  
111 South Wacker Drive, Suite 4050  
Chicago, IL 60606  
Telephone: (312)224-1500  
Facsimile: (312) 224-1510

*Counsel for Stephen L. Lafrance  
Pharmacy, Inc.*

Scott E. Perwin  
[sperwin@kennynachwalter.com](mailto:sperwin@kennynachwalter.com)

Paul E. Slater  
[pes@sperling-law.com](mailto:pes@sperling-law.com)

Lauren Ravkind  
[lravkind@kennynachwalter.com](mailto:lravkind@kennynachwalter.com)  
Kenny Nachwalter, P.A.  
1100 Miami Center  
201 South Biscayne Boulevard  
Miami, Florida 33131-4327  
Telephone: (305) 373-1000  
Facsimile: (305) 372-1861

*Counsel for Walgreens, Inc and SuperValu.*

Steve D. Shadowen (PA41953)  
[sshadowen@hangley.com](mailto:sshadowen@hangley.com)  
Hangley Aronchick Segal & Pudlin  
30 North Third Street  
Harrisburg, PA 17101  
Telephone: (717) 364-1030  
Facsimile: (717) 364-1020

Joseph T. Lukens (PA67405)  
[jlukens@hangley.com](mailto:jlukens@hangley.com)  
Hangley Aronchick Segal & Pudlin  
One Logan Square, Ste. 2700  
18th and Cherry Streets  
Philadelphia, PA 19103  
Telephone: (215) 496-7032  
Facsimile: (215) 568-0300

*Counsel for Rite Aid Corporation*

SPERLING & SLATER  
55 West Monroe Street, Suite 3200  
Chicago, Illinois 60603  
Telephone: (312) 641-3200  
Facsimile: (312)641-6492

Joseph R. Saveri (SBN 130064)  
[isaveri@lchb.com](mailto:isaveri@lchb.com)  
Eric B. Fastiff (SBN 182260)  
[efastiff@lchb.com](mailto:efastiff@lchb.com)  
Jordan Elias (SBN 228731)  
[jelias@lchb.com](mailto:jelias@lchb.com)  
LIEFF CABRASER HEIMANN &  
BERNSTEIN, LLP  
Embarcadero Center West  
Battery Street, Suite 3000  
San Francisco, CA 94111-3339  
Telephone. (415) 956-1000  
Facsimile. (415) 956-1008

Donald Perelman  
[dperelman@fineblack.com](mailto:dperelman@fineblack.com)  
Roberta Liebenberg  
[rliebenberg@fineblack.com](mailto:rliebenberg@fineblack.com)  
1835 Market Street, 28th Floor  
Philadelphia, Pennsylvania 19103  
Telephone: (215) 567-6565  
Facsimile: (215) 568-5872

*Counsel for Meijer, Inc. and Meijer Distribution, Inc.*

**CERTIFICATE OF COMPLIANCE**

Pursuant to Local Rule 7.1D, counsel hereby certifies that the foregoing Direct Purchaser Plaintiffs' Motion to Compel Defendants to Produce Witnesses on Patent Merits Issues for Deposition has been prepared in accordance with Local Rule 5.1 using Times New Roman 14 point font.

Date: April 8, 2011

/s/ Kenneth S. Canfield

Kenneth S. Canfield

Ga. Bar. No. 107744

[kcanfield@dsckd.com](mailto:kcanfield@dsckd.com)

1355 Peachtree Street, Suite 1600

Atlanta, Georgia 30309

Telephone; (404) 881-8900

Facsimile (404) 881-3007

**CERTIFICATE OF SERVICE**

I have this day served counsel for all parties in the foregoing matter with a copy of **Direct Purchaser Plaintiffs' Motion to Compel Defendants to Produce Witnesses on Patent Merits Issues for Deposition, and Accompanying Declaration with Exhibits** by filing the same with the Clerk of the Court using the CM/ECF system, which will automatically send e-mail notification and allow access to the filing to all counsel of record.

Date: April 8, 2011

/s/ Kenneth S. Canfield

Kenneth S. Canfield  
Ga. Bar. No. 107744  
[kcanfield@dsckd.com](mailto:kcanfield@dsckd.com)  
1355 Peachtree Street, Suite 1600  
Atlanta, Georgia 30309  
Telephone; (404) 881-8900  
Facsimile (404) 881-3007